



September 22, 2000

Mr. Kevin M. McGraw  
Assistant City Attorney  
Legal Services  
City of Waco  
P. O. Box 2570  
Waco, Texas 76702-2570

OR2000-3681

Dear Mr. McGraw:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 139334.

The City of Waco (the "city") received a request for current subscriber numbers (cable, phone, and internet) from ClearSource, Inc. ("ClearSource") and fees paid to the city. You explain that the city raises no exceptions on its behalf; however, the city believes that release of the information would implicate ClearSource's proprietary interests. *See* Gov't Code § 552.305(a). You have notified ClearSource of the request in compliance with section 552.305 of the Government Code. *See* Gov't Code § 552.305(b) (permitting interested third party to submit to attorney general reasons why requested information should not be released). ClearSource has responded to the notice asserting that the information is confidential and excepted from public disclosure under sections 552.101, 552.104, and 552.110 of the Government Code. This office has also received briefing from the Public Utility Commission of Texas (the "commission") wherein the commission also argues that the information is confidential. We have considered the claimed exceptions and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. ClearSource contends that the requested information is confidential pursuant to section 552.101 in conjunction with section 52.207 of the Utilities Code and sections 283.005 and 283.055 of the Local Government Code.

ClearSource explains that it is a certificated telecommunications provider and that the requested information is a report which was submitted to the city pursuant to

subsection 283.055(j) of the Local Government Code. Section 283.055, in pertinent part, states the following:

(j) On a quarterly basis, each certificated telecommunications provider shall file a report with the commission that shows the number of access lines, including access lines by category, that the provider has within each municipality at the end of each month of the quarter. . . . On request and *subject to the confidentiality protections of Section 283.005*, each certificated telecommunications provider shall provide each affected municipality with a copy of the report required by this subsection.

(Emphasis added). Section 283.005 of the Local Government Code reads as follows:

(a) The commission may collect and compile any information from certificated telecommunications providers and municipalities as is necessary to implement this chapter.

(b) The commission shall maintain the confidentiality of the information described by Subsection (a) in accordance with Section 52.207, Utilities Code.

(c) Information provided to municipalities under this chapter shall be governed by confidentiality procedures established by the commission in compliance with Section 52.207, Utilities Code.

Section 52.207 of the Utilities Code provides as follows:

(a) In conjunction with the commission's authority to collect and compile information, the commission may collect a report from a holder of a:

- (1) certificate of operating authority; or
- (2) service provider certificate of operating authority.

(b) The commission shall maintain the confidentiality of information contained in a report collected under this section that is claimed to be confidential for competitive purposes. *The confidential information is exempt from disclosure under Chapter 552, Government Code.*

(Emphasis added).

ClearSource states that the information was clearly marked confidential for competitive purposes as required by section 52.207 and that such marking gave notice to the city that ClearSource considered the information confidential under the franchise agreement between

ClearSource and the city. ClearSource argues that it complied with section 52.207, and, as such, the report is confidential and not subject to disclosure under chapter 552 of the Government Code.

After reviewing the submitted information and considering the arguments of ClearSource and the commission, we agree that the submitted information is confidential pursuant to Government Code section 552.101 in conjunction with section 52.207 of the Utilities Code and section 283.005 of the Local Government Code. The submitted information must be withheld in its entirety.<sup>1</sup>

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

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<sup>1</sup>Because we have made a determination under section 552.101, we need not consider your remaining claims.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Julie Reagan Watson  
Assistant Attorney General  
Open Records Division

JRW/er

Ref: ID# 139334

Encl: Submitted documents

cc: Mr. Johnny Mankin  
P. O. Box 7852  
Waco, Texas 76714  
(w/o enclosures)

Mr. David Sibley  
Naman, Howell, Smith & Lee  
1900 Bank One Tower  
221 West Sixth Street  
Austin, Texas 78701-3485  
(w/o enclosures)

Mr. W. Lane Lanford  
Executive Director  
Public Utility Commission of Texas  
P.O. Box 13326  
Austin, Texas 78711  
(w/o enclosures)